

Review

Rule of law in Africa and Asia: Solving the principal-agent problem

Jan-Erik Lane

10 Charles Humbert, 1205 Geneva, Switzerland.

Received 3 November, 2014; Accepted 11 December, 2014

One may look upon the now unfolding events in Burkina Faso from the point of view of rule of law, interpreted with the so-called principal-agent model in the social sciences. Why, then, do many countries in Africa and Asia score low on rule of law, not resolving the principal-agent problem successfully? Is this a legacy from Western colonialism or oriental despotism and tribal forms of power? The principal-agent problem in politics and public administration refers to how the people as principal – *demos* - empower the political leaders and their bureaucrats to govern the country. The principal-agent contract consists of promises about what these agents will do as well as what they may expect in remuneration. The mutual understanding between the principal and the agents – political consideration – tends to become institutionalised. Thus, constitutional and administrative law and praxis make up political consideration.

Key words: Constitutional and administrative law, dimensions of rule of law: rule of law I, rule of law II, democracy, World Bank Governance Project, dimensions of good governance, principal-agent theory of politics and public administration, the Africa-Asia deficit on rule of law.

INTRODUCTION

Rule of law is the regime that offers the best guarantee against political agents dominating the principal, or even worse, exploiting the principal. It is a question of constraining agents, i.e. the principal would want the political agents to be powerful enough to safeguard the state or nation, but he or she would also want to constrain the agents so that abuse of power becomes less likely, such as embezzlement of public money or torture and sudden disappearances of opponents.

However, one must make a distinction between rule of law on the one hand and democracy on the other hand. Countries that are not likely to endorse Western style democracy may still cherish rule of law. Let us start by mapping the spread of rule of law in Africa and Asia by comparative scores and then interpret the findings in terms of more often used principal-agent framework from advanced game theory.

The principal-agent framework has enjoyed far reaching

E-mail: janeklane@googlemail.com.

Bio: Jan-Erik is an independent scholar, who has been full professor at three universities and visiting professor at many more.

Author agree that this article remain permanently open access under the terms of the [Creative Commons Attribution License 4.0 International License](http://creativecommons.org/licenses/by/4.0/)

success in modelling interaction between persons where one works for the other. This interaction is to be found in many settings, such as agriculture, health care, insurance and client-lawyer (Rees, 1985; Laffont and Martimort, 2002). As a matter of fact, the principal-agent problem is inherent in any employment relationship where one person works for another, who pays this person by means of the value of the output.

Whenever people contract with others about getting something done, there arise the typical principal-agent questions:

- 1) What is the *quid pro quo* between the principal and the agent?
- 2) How can the principal check the agent with regard to their agreement?
- 3) Who benefits the most from the interaction between principal and agent?

These questions concerning principal-agent interacting arise whenever there is a long-term contract between two groups of people, involving the delivery of an output against remuneration as well as a time span between the making of the contract and the ending of the relationship with the delivery of the output. One finds this type of interaction in the client-lawyer relationship in the legal context, in the owner-tenant interaction in sharecropping as well as in the asset holder-broker relation in financial markets.

METHOD AND CONCEPTS

The concept of good governance has no standard definition in the dictionaries. Instead, the author will rely upon the approach of the World Bank Project to governance. The World Bank (WB) states:

"Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them." (<http://info.worldbank.org/governance/wgi/index.asp>).

The World Bank's Worldwide Governance project, mapping good or bad governance around the globe during the last decade identifies six dimensions of the concept introduced in the quotation above.

In the World Bank Governance project, one encounters the following definition of "rule of law":

Rule of Law (RL) = capturing perceptions of the extent to which agents have confidence in and abide by the rules of

society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence (Kaufmann et al., 2010: 4).

Rule of law (RL) is explicitly separated from voice and accountability (VA), which is defined as follows in the World Bank project:

Voice and Accountability (VA) = capturing perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media (Kaufmann et al., 2010: 4).

The World Bank Governance project suggests four additional dimensions of good governance (political stability, government effectiveness, regulatory quality, and the control of corruption). The World Bank Governance project employs a host of indicators in order to measure the occurrence of rule of law RL around the globe, which results in a scale from -3 to + 3.

In a constitutional democracy, there is a combination of both rule of law (RL) and voice and accountability (VA). But rule of law was conceived already in the Ancient and medieval periods, whereas Western type democracy belongs to the 20th century. Thus, there is a difference between a narrow concept of rule of law (RL), corresponding to the World Bank's terminology, and rule of law in a broad concept, as including voice and accountability (VA). Several countries have or may introduce rule of law I without accepting rule of law II, i.e. party competitive democracy.

Rule of law principles offer mechanisms that restrain behaviour. We distinguish between rule of law in a narrow sense (legality, due process) – *RULE OF LAW I* – and in a broad sense – *RULE OF LAW II* (constitutional democracy). Some countries practice only rule of law I, whereas other countries harbour both mechanisms. A few countries have neither rule of law I or rule of law II, especially failed or rogue states or states in anarchy or anomie. Figure 1 shows the overall global picture with Rule of Law II on the x-axis (voice and accountability) and Rule of Law I on the y-axis (legality and judicial autonomy).

One may divide Figure 1 into four boxes with the countries scoring negative on rule of law I and rule of law II in the left bottom box. They are mostly African and Asian countries. A few African and Asian states are to be found in the upper left box, meaning they score zero or of law I (legal integrity and judicial autonomy), it is a dismal predicament, especially when analysed from a principal-agent perspective.

The agents – politicians and public officials - and the principal – *demos* - are the two key components of political interaction that run through all political systems, whatever their nature may be. The problem of institutionalising the

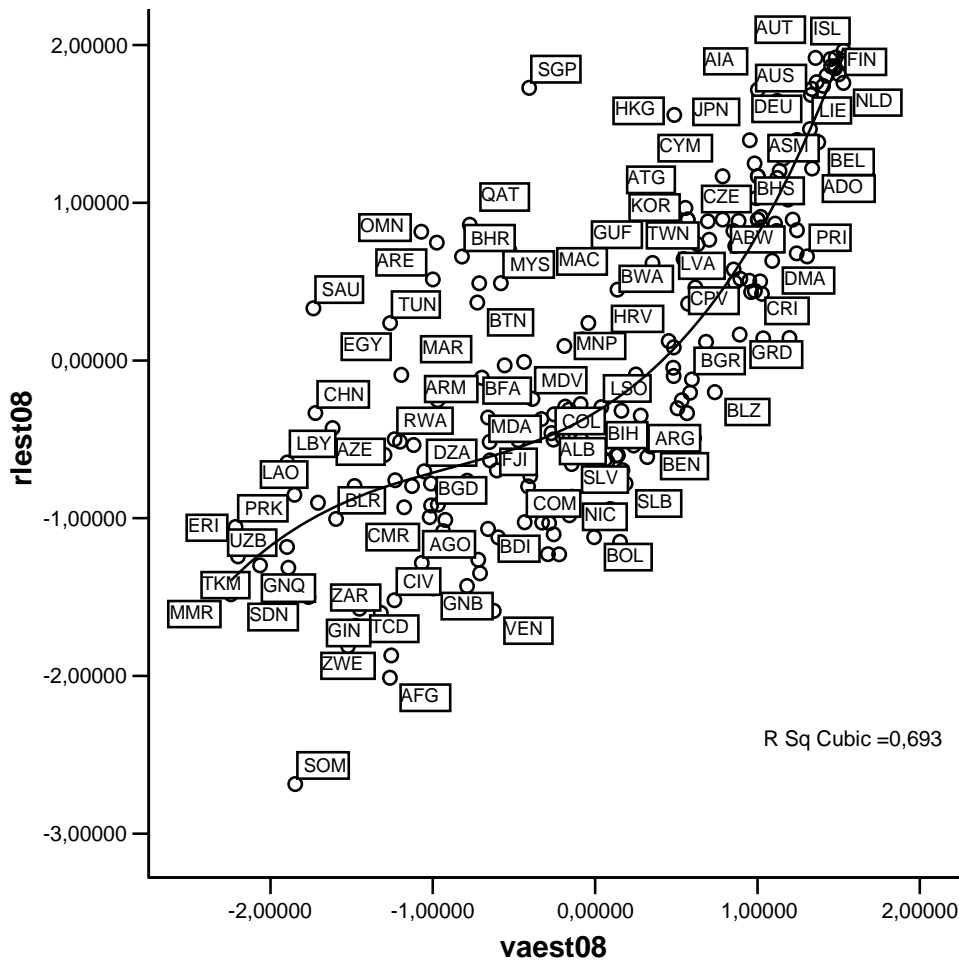


Figure 1. Rule of Law I (rlest08) and Rule of Law II (vaest08). Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008: vaest08, rlest08.

polity originates in this opposition between agents and the principal.

The strength of the principal-agent model is that it bridges rational choice and neo-institutionalism, as its model takes into account three basic elements in interaction, namely rules, incentives and information besides underlining reciprocity. The model is open to the occurrence of opportunistic behaviour, even with guile. When a player has information advantage, then this will be transformed into some form of cash premium. The principal may diminish the information advantage of the agent as specialists by framing the rules of the game such that he/she may have the option of counter-play or replay as well as complaint and judicial redress.

Constitutional principles of good governance

The doctrine of constitutionalism entails the idea of limited government. Moreover, limited government in relation to

civil society implies a state that operates under certain key rules (Bradley and Ewing, 2010):

- i) **Legality:** government is exercised by means of laws, enforced ultimately by an independent judiciary;
- ii) **Lex superior:** there is a higher law – the constitution - that guarantees certain rights for the citizens, like e.g. equality under the law, due process of law and *habeas corpus*;
- iii) **Trias politica:** executive, legislative and judicial powers are to be separated;
- iv) **Accountability:** Governments can be held responsible for their actions and non-actions through various established procedures of criticism and complaint, enquiry and removal from office as well as redress;
- v) **Representation:** The people have a SAY somehow in government through representative institutions.

These principles above emerged hundreds of years ago, long before democracy was introduced in many countries at

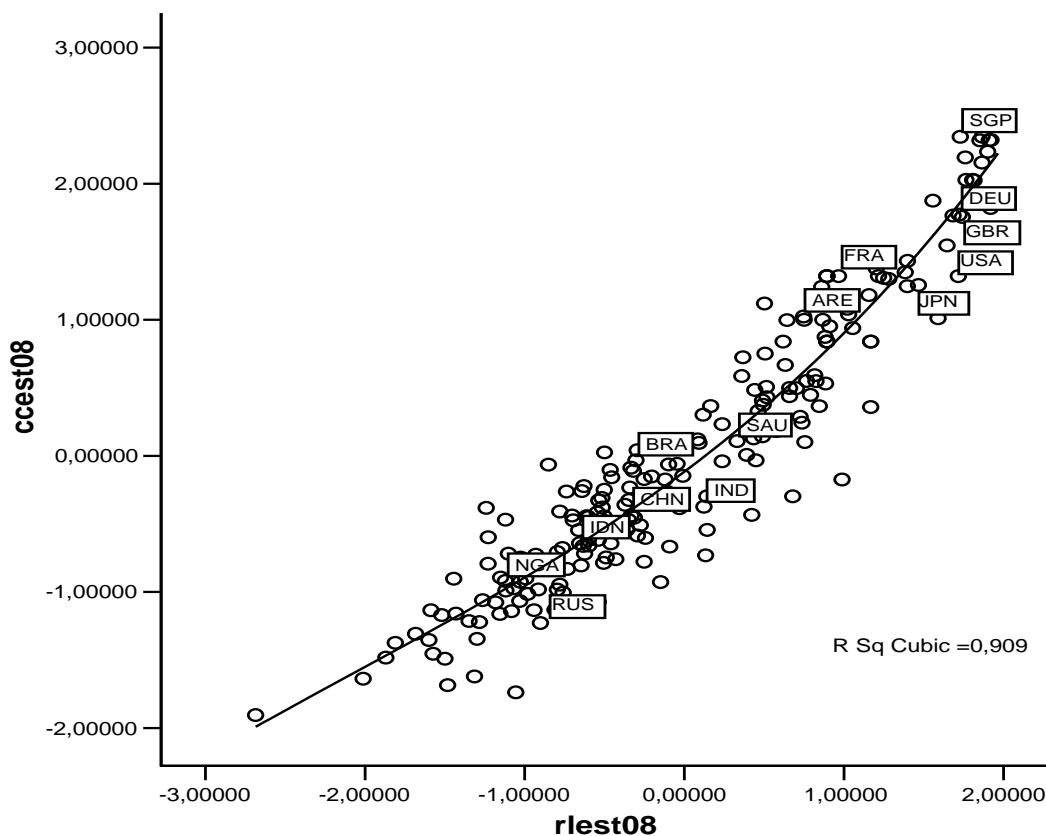


Figure 2. Rule of Law I and Transparency. Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008: rlest08, ccest08.

the end of the First World War in Europe and America (Lloyd, 1991; McIlwain, 1958; Neumann, 1986). Today all existing democracies endorse these constitutional principles: constitutional democracies. But several non-democratic countries honour principles of the rule of law without accepting Western style democracy. Thus, rule of law I is relevant to both democratic and non-democratic regimes.

Constitutional government embodies institutions or rules that constrain those active in domestic or international politics today. Thus, the meaning of “constitution” is a set of principles or rules that constrain rulers, politicians, governments or states. But there can be constitutional government without Western democracy, based upon competitive elections among political parties.

The spread of rule of law II (democracy) seems to be culture bound, as countries with an Islamic (The Koran as constitution) or Buddhist tradition (Asian values, Singapore) hesitate to adopt fully Western democracy as competitive party government. However, the introduction and enforcement of rule of law I is an entirely different matter. Due process of law is relevant for all states in the world. Where it is lacking, we find arbitrary government, embezzlement of public money and the unpredictable seizure and violent

treatment of persons.

Consider Figure 2, constructed with the WB Governance Project data. It links the control of corruption on the y-axis – state transparency – with the rule of law I on the x-axis.

Rule of law I can be promoted by institutional policy-making by the political elites in a country. A key institution is the *Ombudsman*, checking the legality of public administration. Rule of law I is highly relevant for the state, also the countries that are non-democracies: military government, charismatic rule, kingdoms, sultanates, failed states, one-party states. It is the best antidote against much long-lived presidents (Burkina Faso, Malawi), arbitrary court rulings (Egypt, China), kleptocracy (Mobutu, Ben Ali), torture (Idi Amin), terrorist attacks (Kenya, Pakistan), civil war (Iraq, Syria), violent civil protests (Bangladesh, Thailand), patronage or favouritism (Saud family, Jacob Suma) and religious judicialisation (Iran, Afghanistan).

WHY RULE OF LAW: What is the basic rationale?

There is a form of interaction that tends to be long-term between individuals, which involves a *hiatus* between the agreement about what is to be done against remuneration

(*ex ante*) and the later in time fulfilment of this contract (*ex post*). This time interval, lasting often more than several months or years, sets up the monitoring problem: Has the agreement been fulfilled in accordance with the considerations when the contract was made? This type of interaction does not take place in the various market forms, but constitutes a problem of analysis in itself (Arrow, 1985). The more this special type of contracting was analysed, between a principal asking for a service or job on the one hand and a set of knowable agents delivering this service or job on a long-term contract, the more often it was found in various important sectors (Ross, 1973; Grossman and Hart, 1983; Sappington, 1991; White, 1992; Ackere, 1993; Althaus, 1997). What came to be known as “*the principal’s problem*” was found in lengthy interactions within legal affairs, psychiatry, stock-market trading and agricultural production (*sharecropping*).

Two basic aspects of long-term contracting are transaction costs and asymmetric information, which never entered in the standard assumptions of the neo-classical decision model in mainstream economics. Since the agent(s) is supposed to have much more knowledge about the service or job to be done, the principal needs to diminish this advantage, but without running up too heavy transaction costs, through costly monitoring or litigation. The agent(s) wants remuneration, which has to come from the value of the service or job delivered. Thus, there is both cooperation and conflict.

The theory of transaction costs stimulated this way of looking at long-term contracting (Rao, 2002). It was also furthered by insights into the nature of institutions, where rules could be employed to prop up the position of the principal (Furubotn and Richter, 2005; Weingast, 1989; Persson and Tabellini, 2003). Now, rule of law is nothing less than the regime that hands down institutions that counter-act agent opportunism, bolstering the principal.

Opportunism of politicians and bureaucrats

Political agents are no different from any other human beings. They are driven by the same mixture of egoism and altruism as the average person. Sometimes political agents may be completely obsessed by protecting their own self interests, as with cruel personalities like Genghis-Khan, Tamerlane, Hitler and Stalin. Sometimes political agents display great generosity and forgiveness towards their opponents, like Gandhi and Mandela. But on average political agents – politicians and public officials – would be self-seeking, often with guile – the opportunism assumption.

The implications of assuming opportunism on the part of agents are strengthened in terms of importance when one adds the basic fact about long-term interaction of the principal-agent type, namely asymmetric information. It is the agent who delivers the output who knows the most

about all things relevant to the interaction. And the agent will use this information advantage to capture a rent, or a set of benefits.

Strategy is a pervasive trait of human interaction, both in the micro and macro setting. Taking strategic considerations into account goes well in hand with opportunism and asymmetric information. The same applies to tactics. What, then, is the basic issue of contention in the principal-agent interaction? Answer: the division of advantages, given a certain size of the mutual gains to be had.

The state helps the population produce an output, a set of goods and services, to be denoted here with “*V*”, meaning value. By providing peace and stability, the population may engage in productive labour, resulting in an output of increasing value year after year. The political agents will claim a part of this value *V* for their contributions. It is the principal who ultimately has to pay the agents out of the total value *V* in society.

The agreement about what the agents are to contribute with as well as what they are to be paid may be only a tacit one. It may not even be a voluntary one, as the political agents may force the principal to accept an agreement by the employment of force.

Two things are of great concern to the principal:

- 1) The maximisation of *V*: If the political agents act in such a manner as to reduce *V*, then this is not in the interest of the principal.
- 2) Reasonable agent remuneration *R*: If the agents manage to capture a considerable portion of *V* for themselves, then that would be counterproductive to the principal.

It follows from these two principles that principals would be very unhappy with a situation where their political agents contribute to a low output *V*, while at the same time providing them with a considerable share of *V* by maximising *R*.

What is included in the output *V*? One may confine *V* to the set of public or semi-public goods. The country contracts with a set of agents in order to protect *V*, but the country must remunerate the agents (*R*) from *V*. How can the country select and monitor its agents so that *V* is maximised, given the constraint that the set of agents must be compensated for their effort *R*, from *V*? One may offer a most comprehensive definition of *R*, denoting both tangible assets and intangible ones? *R* includes all things that are valuable: goods, premises, services, assets, perks, prestige, esteem, etc.

The interaction between political leaders and the population is omnipresent. Whatever the leaders are called and whichever rules apply for their behaviour, human societies have not been leaderless. Even among groups with a highly egalitarian culture, political leaders somehow emerge. This sets up the principal-agent problem inherent in the state.

When two people or sets of people interact, they may arrive at a mutual understanding of the terms of interaction. These expectations may be enshrined in a contract, written or verbal. Yet, even when the expectations governing the interaction between the political agents and the principal are not codified somehow, there is still consideration.

Consideration is at the core of human exchange and contracting: Something of value is given for getting something from another person. Consideration is the inducement, price or motive that causes a party to enter into an agreement or contract. In politics, the leaders receive ample consideration for governing the country. They take a part of total value V for their needs. And they are expected to deliver services to the political club, first and foremost maintain the peace, deliver public goods and enhance the GDP.

Since the consideration must be some benefit to the party by whom the promise is made, or to a third person at his instance, or some detriment sustained at the instance of the party promising by the party in whose favour the promise is made, politics is replete with consideration. The agents of the state employ a variety of techniques to raise value to themselves as consideration for their governance activities.

Political monopoly

The external costs to the state may be very high, if there is political monopoly. What the principal would not want to have, all other things equal, is a situation where the political agents not only take a huge remuneration R for their work but also accomplish mediocre or straightforward disastrous outcomes, reducing the value of society V . In the principal-agent literature, excessive remuneration on the part of the agent is referred to as “rent-seeking”, whereas the failure of the agents to deliver on what they have promised is called “dissonant” actions. The important point here is that political agents may disappoint their principal on two grounds: (1) Dissipation of value V , meaning underperformance as measured by outcomes; (2) Looting, i.e. engaging in excessive remuneration R .

A virtue of the principal-agent perspective is that it alerts people to the possibility of large-scale looting in politics and public administration. The worst case scenario for the principal is the combination of bad outcomes in politics and excessive remuneration for agents responsible for the results. This happens often when there is looting.

“Looting” refers to any form of taking of value that amounts to an un-proportional compensation in relation to the effort exerted. It may be illegal, as when soldiers go on a rampage. But political looting is often more refined than populist looting when law and order breaks down. The appropriation of the resources of the administrative apparatus (“slack”) is a typical form of political looting, much emphasized by Weber for his comparative institutional

analyses (Weber, 1978). The concept of political looting is broader than the notion of corruption or embezzlement, which are strictly illegal phenomena.

Looting may occur with or without value dissipation. Political agents may successfully claim a huge portion of the value in society without at the same time reducing the total size of value. In many Third World countries, political looting goes hand in hand with value dissipation though. An extreme case is that of present day Zimbabwe, which country according to its president “is mine”.

Sophisticated forms of looting may occur in constitutional democracy, as when the executive allows itself to be surrounded by vast staff of advisors, experts and the like. Or political agents in the legislature manage to provide themselves with excessive budgets and perks. The fact that corruption allegation is an almost constant theme in public debate indicates how sensitive the principal is to the risk of looting. One form of political looting is of course nepotism or favouritism with regard to family members or cliques of friends when conducted by a president or premier for instance. Petty forms of looting involve negligence about the line of separation between private and public expenditures.

The rule of law regime is highly aware of the risk of looting, offering restraining rules about taxation, budgeting and financial accountability. It also aims at counteracting the dissipation of social value through representation, election and re-election. The dissipation of value is a problem of aggregation in society (*size of the cake*), whereas the risk of political looting presents a distributional problem (*who gets what*).

Value dissipation

The constant focus of policy-makers upon economic growth shows how aware the principal is today about the risk of value dissipation. The population worries not only about various forms of looting but also about the risk of unfortunate or disastrous policy-making that reduce aggregate income or wealth. A set of political agents may be extremely costly to the country because they are incompetent although honest. Political consideration as defining the *quid pro quo* relation underneath political leadership would comprise some mechanism for replacing one set of agents with another, especially in a rule of law regime.

There is the possibility of a dramatic effect from the combination of looting and dissipation of value, like for instance as matters now stand in countries like Myanmar, Zimbabwe and North Korea. One should not, however, assume that the risk of value dissipation is unique to Third World countries. On the contrary, value dissipation occurs also in First World countries, where the 2003 American led invasion of Iraq offers a telling example, resulting in so huge costs – human and economic - and so little. And even a country like the UK with its rule of law tradition does not

appear to be immune from various looting strategies on the part of parliamentarians, definitely immoral but not always illegal. Consider Figure 3 depicting the relationship between rule of law I and the level of human development.

The theory of good governance entails that a government adhering to rule of law precepts will tend to be more successful in enhancing socio-economic development than a government that fails to respect them. Thus, economic activity will be stimulated by legal predictability, the protection of property, and the autonomy of judges when testing cases for assumed violations of law (Cooter and Ulen, 2011).

RULE OF LAW IN POLITICS AND PUBLIC ADMINISTRATION

Rule of law institutions constrain the political agents – politicians at various levels of governments, political parties, rulers, bureaucrats, agencies, etc. - to the advantage of the *demos*, i.e. the population in a country. Only rule of law institutions can restrain political agents from engaging in opportunistic behaviour, like e.g. corruption, favouritism, embezzlement or patronage.

Within a country normally the constitution outlines a set of constraints upon the political agents, when it is enforced. Internationally, states accept to participate in regional and international organisations that also may restrain the political agents. The process of globalisation has reinforced the regional and international bodies, constraining more and more the states of the world.

One may view the structure of political agents as a nexus of principal-agent relationships. Thus, groups choose their political parties, who when elected to the national assembly in turn select government officials. The population as the principal may wish to have a set of different types of agents, confronting and controlling each other – separation of powers. Competition among agents in elections is one mechanism for restraining political agents, counter-veiling agents like judges constituting another mechanism.

The principal would, one may imagine, support the recruiting of agents in the regional and international bodies, as they offer further restrictions upon the governments of states. Public international law offers some important protections for the country population against abuse of power by their own governments.

The idea of a principal-agent relationship is simple when one person hires another to do work for him against compensation in a contract with a long-term duration - consideration. Typical of political institutionalisation is that there are several principal-agent relationships and they are not all of the same kind.

First, one may distinguish between executive, legislative and judicial agents – the classical doctrine of *trias politica* in constitutionalism. The interaction between executive and legislative agents may be structured alternatively, like in

parliamentarism or presidentialism. What is crucial with the judiciary, whether structured as in the Common Law tradition or as in the Civil Law tradition, is the political independence of the judges from the executive and legislative agents.

Second, a state may be organised on a territorial basis with communes, regions and the national government under alternative institutional arrangements. With federalism, there is a complete replica of the *trias politica* at each level in the complex system, each province being organised as a state. In a unitary state, the nation-state prevails over the regional and local governments in a single dispensation.

The principal of the state – the citizenry or population - club may fear two kinds of external costs, namely the costs imposed by intruders from outside or troublemakers from inside on the one hand, as well as the costs stemming from the actions of the political agents. The principal would be willing to empower the political club in order to reduce the first type of cost. But strengthening the political club leads to the risk that the political agents become so powerful that they abuse the strength of the state for their aggrandizement.

The domination of the agents over the principal may take many forms in politics. Most of them involve political monopoly, meaning that a subset of agents eliminate all other contending agents. Political monopoly may take a few institutional expressions: a) Hereditary monarchy; b) Gerontocracy, c) Aristocracy, d) Racial or ethnic domination; and e) the one-party state.

Political monopoly allows the agents to engage in looting, meaning that the agents take a huge part of the total value *V* in society for covering their own needs. Looting is an agent strategy that may take different forms. One may point at the revenue system of the Mughal emperors in India, which degenerated slowly into oppressive forms, impoverishing the population, as different agents one after the other squeezed out their "bonuses" from the peasants' *V* (Keay, 2009). Looting as e.g. tax farming or sharecropping definitely leads to the dissipation of value also in Imperial China (Keay, 2010) and in the later Ottoman Empire (Darling, 1996; Inalcik et al., 1997).

A third form of agent domination is when agents ravage the country, rendering havoc and promoting anarchy. In civil war and anomie, opposing subsets of agents fight each other, while making the life of ordinary people miserable and often short. Civil war entails that the political club no longer exists, or operates in accordance with the original political consideration. It is a marginal case of agent domination, but it is not infrequent.

The mechanism of political monopoly involves exclusion, perpetuation and concentration. Thus, only one subset of agents is tolerated. This subset attempts to prolong its grip on power using various strategies. Finally, advantages – economic or other - are concentrated in this subset of agents.

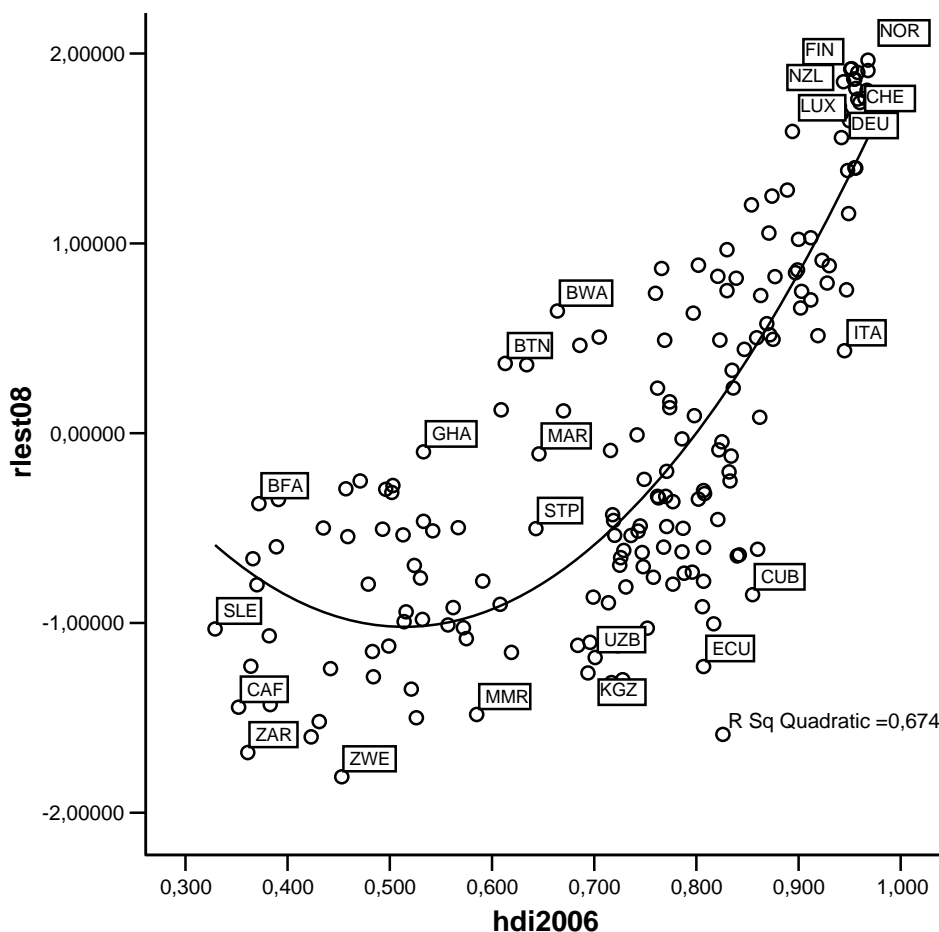


Figure 3. Human Development Index 2008 and Rule of Law I. Sources: Governance Matters 2009. Worldwide Governance Indicators 1996-2008: RLEST 2008; UNDP (2008): HDI 2006.

RELEVANCE OF PRINCIPAL-AGENT MODEL: Restraining Politicians and Bureaucrats

Under any political or in any state, the citizens hire and instruct a set of agents – politicians and officials - to work for them against remuneration to be taken out of the value that the agent contributes to. The agents can put in high effort or low effort, schematically speaking, which has an impact upon the value that is created. The factor “effort” captures all that lead an agent to be either highly or poorly performing. Both parties are assumed to maximise their utility, which for the agents involves compensation for the disutility that high effort imposes upon him/her. Thus, there arises a gaming situation where the agent wants to maximise his/her compensation while the principal wants to maximise the value that the agent helps producing minus the remuneration of the agent. All kinds of solutions to this game are conceivable, depending upon contingencies such as the availability of agents as well as the existence of asymmetric information. In politics, it is the agents who know the most (Barro, 1973; Ferejohn, 1986; Ferejohn and

Shipa, 1990; Weingast, 1989; Rao, 2002; Besley 2006; Helland and Sørensen, 2009).

The principal would wish to maximise the contribution of the agents to total value and its fair distribution in society, subject to the restriction that the agents need to be remunerated for their effort. Thus, we have the two key equations: (1) Principal: Max total value or income subject to fairness in distribution; and (2) Agent: Max remuneration covering both salary and perquisites. Given perfect information, there is a first best solution to the problem, namely: that the principal installs the most efficient agents, taking (1) and (2) into account. However, given asymmetric information the principal is forced to look for second best solutions that all will involve a better deal for the agents.

In well-ordered societies, the political agents in government operate the set of governance mechanisms that we call “state” (Kelsen, 1961; 1967). It claims sovereignty over its country, but it enters into a web of relationships with other states, governed by the rule of law principles of the international society, namely the so-called *public international law*.

A state may be seen as flowing from an agreement among the members about helping each other in securing peace and stability. A body of rules would codify this mutual agreement. A state quickly develops a division of labour between leaders and followers, the subgroup who implements the rules and the subgroup who follow the rules in their behaviour. I will call the followers the "principal" of the political club and the leaders the "agents". Thus, the political club will be modelled as confronted by the principal-agent problem, comprising *inter alia*:

1. Who are the political agents?
2. How are these agents selected?
3. Can agent power be laid down formally?
4. Are there restraints on the power of the agents?

In politics, transaction costs are minimised by handing over the responsibility for the tasks of the state to a set of people, called the leaders and their public servants. The author will employ the word: "agents". The agents provide the members of the state – the citizenry or the principal – with the chief goods and services of this type of community, when they are successful that is.

Conclusion

The principal-agent model is especially valuable when understanding interaction that takes some time to evolve from *ex ante* to *ex post*, involving moves and countermoves on the part of both parties. Politicians and bureaucrats *versus* the population (*demos*) is an example of such interaction that has a longer time span, as the principal will evaluate whether the agents perform well or not at distinct points in time

When governance is modelled as a principal-agent game, then it is not merely a matter of the interaction between two or more persons. The agent(s) is hired to accomplish an output or outcome, to be paid for his/her effort to do so. Here we have the two key foci in a principal-agent evaluation of governance: (1) the achievements or V – good or bad performance; (2) the remuneration or R – high or low.

In the literature, these two aspects – performance and remuneration – are not always kept separate. Thus, one speaks of bad performances when there is only high remuneration like in "corruption" or "rent-seeking". Moreover, bad performance is sometimes equated merely with a failure to live up to promises made. The principal-agent framework is applicable to governance and public administration even when there is no form of embezzlement by the agents, but merely reneging on lofty promises.

A state that runs according to rule of law would satisfy a few conditions that constrain the exercise of political power (Vile, 1967; Tierney, 1982). Rule of law entails that power is

be exercised according to the following precepts concerning due legal process and judicial accountability:

- 1) (1.) Legality (*nullum crimen sine lege*);
- 2) (2.) Constitutionality (*lex superior*);
- 3) (3.) Rights and duties: negative human rights (*habeas corpus*);
- 4) (4.) Judicial independence: complaint, appeal, compensation.

From the rule of law perspective, two unresolved questions are central in political agency, whatever the political regime may be:

- (1) What is the proper remuneration of the agents, both salary and perks - R?
- (2) Do agents really deliver, i.e. how can agent performance be evaluated systematically in terms of outcome data - V?

The remuneration of political agents, whether in legal or illegal forms, has not been much researched, not even in democracies where information is in principle available. For countries where the state controls such information not much is known, for instance about China or the Gulf monarchies. And political agents may destroy much value V in society - see Meredith on Africa (1997).

Conflict of Interests

The author has not declared any conflict of interests.

REFERENCES

- Ackere A (1993). The principal/agent paradigm: Its relevance to various functional fields. *Eur. J. Operational Res.* 70: 83-103.
- Althaus C (1997). "The Application of Agency Theory to Public Sector Management" in G. Davis, B. Sullivan & A. Yeatman (eds.), *The New Contractualism?*, eds. Centre for Australian Public Sector Management, pp. 137-153.
- Arrow K (1985). "The Economics of Agency" in J. Pratt and R. Zeckhauser (eds), *Principals and agents: The Structure of business*, Boston: Harvard University Press, Pp. 37-51.
- Barro RJ (1973). "The Control of Politicians: An Economic Model", *Public Choice* 14: 9-42.
- Besley T (2006). *Principled Agents? The Political Economy of Good Government*. Oxford: Oxford U.P.
- Bradley A, Ewing K (2010). *Constitutional and Administrative Law*. London: Longman.
- Cooter RD, Ulen T (2011). *Law and Economics*. New York: Pearson.
- Darling, LT (1996). *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire, 1560-1660*. Leiden: Brill.
- Ferejohn J (1986). "Incumbent performance and electoral control", *Public Choice* 30: 5-25.
- Ferejohn J, Shipa C (1990). "Congressional Influence on Bureaucracy", *J. Law. Economics, Organization*. 6:1-20.
- Furubotn EG, Richter R (2005). *Institutions and Economic Theory: The Contribution of the New Institutional Economics*. Ann Arbor: The University of Michigan Press.
- Grossman SJ, Hart OD (1983). "An analysis of the principal-agent problem", *Econometrica*, 51: 7-46.

- Helland L, Sørensen RJ (2009). "Hvorfor overlever politisk korrupsjon i representative demokratier?", *Norsk Statsvitenskapelig Tidsskrift*, 25(3): 219-236.
- Inalcik H, Faroqi S, McGowan B, Quataert D, Pamuk S (1997). *An Economic and Social History of the Ottoman Empire, 1300-1914*. Cambridge: Cambridge U.P.
- Keay J (2009) *China: A history*. Hammersmith: Harperperss.
- Keay J (2010) *India: A history*. Hammersmith: Harperpress.
- Kelsen H (1961). *General Theory of Law and State*. New York: Russell & Russell.
- Kelsen H (1967). *Pure Theory of Law*. Berkeley: University of California Press.
- Laffont JJ, Martimort D (2002). *The theory of incentives: the principal-agent model*. Princeton, New Jersey: Princeton University Press.
- Lloyd D (1991). *The Idea of Law*. London: Penguin Books.
- Lloyd H A.(1991). "Constitutionalism" in Burns and Goldie, (op.cit.), pp. 254-297.
- McIlwain CH (1958). *Constitutionalism, Ancient and Modern*. New York: Cornell University Press.
- Meredith M (1997). *The State of Africa*. London: Free Press.
- Neumann FL (1986). *The Rule of Law: political theory and the legal system in modern society*. Leanington Spa: Berg.
- Persson T, Tabellini G (2003). *The Economic Effects of Constitutions* MIT Press.
- Rao PK (2002). *The Economics of Transaction Costs*. Basingstoke: Palgrave/Macmillan.
- Rees R (1985). "The theory of principal and agent", *Bull. Economic Research*, 37(1): 3=26.
- Ross S (1973). "The economic theory of agency: The principal's problem", *American Economic Review*, 63(2): 134-139.
- Sappington D (1991). "Incentives in principal agent relationships", *Journal of Economic Perspectives* 3(2): 45-66.
- Schwöbel CEJ (2011). *Global Constitutionalism in International Legal Perspective*. Leiden: Martinus Nijhoff.
- Tierney B (1982). *Religion, Law, and the Growth of Constitutional Thought 1150-1650*. Cambridge: Cambridge University Press.
- Weber M (1970). *Economy and Society*. Berkeley: University of California Press.
- Weingast B (1989). "The Political Institutions of Representative Government: Legislatures", in J. Institutional and Theoretical Economics, 145: 693-703. Reprinted in Furubotn, E. and R. Richter (eds), *The New Institutional Economics*. (Tübingen: J.C.B. Mokr (Paul Siebeck) and college Station: Texas A&M Press, 1991).
- Vile MJC (1967). *Constitutionalism and the Separation of Powers*. Oxford: Oxford University Press.
- White WD (1992). "Information and the control of agents" *Journal of Economic Behavior and Organization*, 18: 111-117.
- Wormuth FD (1949). *The Origins of Modern Constitutionalism*. New York: Harper.
- Kaufmann D, Kraay A, Mastruzzi M (2010). *Worldwide Governance Indicators*, in "The Worldwide Governance Indicators: Methodology and analytical issues". World Bank Policy Working pp. 5430. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1682130
- World Bank (2012). *Governance mProject*: <http://info.worldbank.org/governance/wgi/>.
- United Nations (2008). *Human Development Report*. UNDP: United Nations Development Project.